

Neifeld Docket No: CAT/34-SCRO-CCP

Application/Patent No: 09/505,632

USPTO CONFIRMATION NO: 5917

File/Issue Date: 2/16/2000

Inventor/Title: Scroggie

Examiner/ArtUnit: Robinson Boyce/3628

37 CFR 41.43(b) REPLY BRIEF IN RESPONSE TO A SUPPLEMENTAL EXAMINER'S
ANSWER

ASSISTANT COMMISSIONER FOR PATENTS

ALEXANDRIA, VA 22313

Sir:

Please consider this second reply brief, which is filed pursuant to 37 CFR 41.43(b), and which is in response to the supplemental examiner's answer dated 3/17/2008.

I. SUMMARY

The office entered a paper titled "Supplemental Examiner's Answer" on March 17, 2008. In response, the appellant (1) urges the examiner to issue withdraw the answer and issue a corrected paper and (2) points out on the merits that the supplemental examiner's answer contains no new arguments.

II. THE SUPPLEMENTAL EXAMINER'S ANSWER SHOULD BE WITHDRAWN

The appellant urges the examiner to withdraw the supplemental examiner's answer because it fails to comply with USPTO procedural requirements and will therefore result in a BPAI order remanding the file to the examiner for correction of the record, further delaying this appeals proceeding.

Relevant facts:

FIRST ISSUE

1. 37 CFR 41.43(a) limits the right to a supplemental examiner's answer to respond to a new issue raised in a reply brief.
2. The statement of the supplemental examiner's answer is in all material respects identical, word for word, to the prior examiner's answer, the answer mailed 6/20/2007.
3. The supplemental examiner's answer does not respond to a new issue raised in the original reply brief.

SECOND ISSUE

4. MPEP 1202.07 requires that a TC director or delegate authorize, in writing (that is, sign), a supplemental examiner's answer.
5. The Appeals Administrator at the BPAI will enter an order returning an undocketed appeal to the examiner for lack of compliance with MPEP 1202.07.
6. There is no indication in the supplemental examiner's answer that a TC director or delegate authorized the supplemental examiner's answer.

THIRD ISSUE

7. The supplemental examiner's answer states on page 16 that "[c]opies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein."
8. No copies of "the court or Board decision(s)" were provided in the original examiner's answer dated 6/20/2007.
9. No copies of "the court or Board decision(s)" are provided in the supplemental examiner's answer.

10. On 2/21/2008, the appellant filed in this application, under 41.8(b), a decision in a related application.

FOURTH ISSUE

11. Attached to the supplemental examiner's answer is an IDS filed 12/30/2004 which now contains initials of the examiner next to the cited references.

As to the first issue, the supplemental examiner's answer does not respond to anything new and it contains nothing new. Therefore it fails to comply with 41.43(a). In effect, it will waste the panel's time by requiring them, as it required me, to confirm that there is in fact no new information in the supplemental examiner's answer.

As to the second issue, the supplemental examiner's answer is not signed by a TC director or delegate, or at least there is no indication that anyone who signed the supplemental examiner's answer is a TC director or delegate. Accordingly, there is a very high likelihood that the Board will enter an order remanding the application to the examiner to include such a signature.

Third, the supplemental examiner's answer indicates that there are attachments. In fact, there are no such attachments. Accordingly, there is a very high likelihood that the Board will enter an order remanding the application to the examiner, to include those attachments.

As to the fourth issue, there appears to be no reason for the examiner to issue a supplemental examiner's answer merely because the examiner just considered an IDS.

If the examiner has any questions, he is urged to contact the BPAI Appeals Administrator, Dale Shaw, to confirm that the BPAI will in fact order the file remanded for correction of the points noted above, and to determine how to proceed to avoid such an order.

As to a response on the merits, I have reviewed the supplemental examiner's answer on its merits, and it contains only the arguments in the original examiner's answer. Since those arguments were addressed in the original reply brief, there is no basis herein for further comment.

Date 3/25/2008 /RichardNeifeld#35,299/

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Date/time: March 25, 2008 (4:00pm)

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